

REMARKS

Claims 39 to 42 are added, and therefore, claims 20 to 42 are pending in the present application.

In view of the following remarks, it is respectfully submitted that the pending claims are allowable, and reconsideration is respectfully requested.

Applicants thank the Examiner for acknowledging the claim for foreign priority and for indicating that all certified copies of the priority documents have been received.

Applicants thank the Examiner for considering the previously filed Information Disclosure Statement, PTO 1449 paper and cited references.

Claims 20 to 38 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Publication No. 2003/0051530 to Eisele et al. ("Eisele"). Applicants note that this rejection should be withdrawn for at least the following reasons.

To reject a claim under 35 U.S.C. § 102, the Office must demonstrate that each and every claim feature is identically described or contained in a single prior art reference. (*See Scripps Clinic & Research Foundation v. Genentech, Inc.*, 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991)). Still further, not only must each of the claim features be identically described, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed invention, namely the claimed subject matter of the claims, as discussed herein. (*See Akzo, N.V. v. U.S.I.T.C.*, 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986)).

As further regards the anticipation rejections, to the extent that the Office Action may be relying on the inherency doctrine, it is respectfully submitted that to rely on inherency, the Office must provide a "basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics *necessarily* flows from the teachings of the applied art." (*See* M.P.E.P. § 2112; emphasis in original; and *see Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Int'f. 1990)). Thus, the M.P.E.P. and the case law make clear that simply because a certain result or characteristic may occur in the prior art does not establish the inherency of that result or characteristic. Accordingly, it is respectfully submitted that any anticipation rejection premised on the inherency doctrine is not sustainable absent the foregoing conditions.

Claim 1 relates to a safety device for a vehicle that can be activated upon an impact of the vehicle against an obstacle. It includes a first sensor, a second sensor, and a third sensor arrangement for acquiring relevant information. The third sensor arrangement is for acquiring an *environmental influence on the second sensor* arrangement and for outputting a third sensor signal dependent on the environmental influence. By its express terms, claim 20 requires the control device to determine, *based on the second sensor signal, whether to trigger the restraint system after an evaluation of the third signal*. It is respectfully submitted that the Eisele reference does not identically disclose, or suggest, this feature.

As to cited figure 2 of Eisele, the Office Action does not explain, nor is it readily apparent, how the cited sections might be considered to disclose this feature. Indeed, review of the entire Eisele reference makes plain that a determination based on the second sensor signal whether to trigger the restraint system after an evaluation of the third signal, let alone the third signal being dependent on the environmental influence, is not discussed at all.

Even if Eisele did determine a temperature, it does not identically disclose (or even suggest) the third sensor of the claimed subject matter. Indeed, Eisele specifically states that its temperature sensor is used as an *impact sensor*. (See Eisele, paragraph [0005]). Accordingly, the temperature sensor of Eisele is not for acquiring an environmental influence on the second sensor arrangement, as provided for in the context of claim 1.

In view of the foregoing, the Eisele reference does not identically disclose (or suggest) all the features of claim 1. Accordingly, claim 1 is allowable, as are its dependent claims 21 to 26.

Claim 27 includes features similar to those of claim 20. Claim 27, and its dependent claims 28 to 38 are therefore allowable for essentially the same reasons as claim 20.

Withdrawal of the anticipation rejections of claims 20 to 38 is therefore respectfully requested.

New claims 39 to 42 do not add any new matter and are supported by the present application. Claims 39 to 42 depend from claims 20 and 27 respectively and they are therefore allowable at least for the same reasons. Additionally, each of these claims provides further features that are not disclosed or suggested by the applied references.

Accordingly, claims 20 to 42 are allowable.

CONCLUSION

In view of the foregoing, it is respectfully submitted that all of the pending and considered claims are allowable. It is therefore respectfully requested that the rejections (and any objections) be withdrawn. Prompt reconsideration and allowance of the present application are therefore respectfully requested.

Dated: _____

8/17/2010

Respectfully submitted,

By: _____

Gerard A. Messina
(Reg. No. 35,952)

KENYON & KENYON LLP
One Broadway
New York, NY 10004
(212) 425-7200

CUSTOMER NO. 26646